the accused to show his own good character, another exception has been introduced in actions for slander imputing a crime, where truth has been pleaded. *Harding* v. *Brooks*, 5 Pick. (Mass.) 244; *Downey* v. *Dillon*, 52 Ind. 442. *Contra*, *Matthews* v. *Huntley*, 9 N. H. 146; *Houghtaling* v. *Kelderhouse*, 2 Barb. (N. Y.) 149 (affirmed 1 N. Y. 530). A somewhat similar exception has been advocated wherever, as in the principal case, the act in issue is itself also a crime. *Hein* v. *Holdridge*, 78 Minn. 468, 81 N. W. 522. *Contra*, *Continental Ins. Co.* v. *Jacknichen*, 110 Ind. 59, 10 N. E. 636; *Adams* v. *Elseffer*, 132 Mich. 100, 92 N. W. 772. In following the analogy of the criminal cases, these two last exceptions overlook the historical fact that the rule in criminal cases is an exception made in favor of the criminal in an attempt to mitigate the severity of the old English criminal law. See *Matthews* v. *Huntley*, *supra*, 148. This consideration has no place in a civil suit. On the other hand, the dangers of complicating the issue, prolonging the trial and prejudicing the jury weigh heavily against extending the exceptions to the character rule.

EVIDENCE — OPINION EVIDENCE — EXPERT TESTIMONY: CALCULATION OF PROBABILITY. — The defendant was indicted for having offered in evidence a typewritten document with knowledge of its fraudulent alteration. It was shown that certain peculiarities of the form and alignment of the letters of the alteration corresponded exactly with peculiarities in specimens of writing from the defendant's typewriter. The defendant brought out from testimony given by typewriter experts the many causes and great frequency of occurrence of such peculiarities. In answer to a hypothetical question propounded by the prosecution assuming a certain frequency to the appearance of each defect, an assumption apparently unwarranted by any evidence, an expert mathematician then calculated for the jury the chances of the coincidence of these defects in another machine as being one in four billion. *Held*, that the admission of this mathematician's testimony was reversible error. *People* v. *Risley*, 214 N. Y. 75, 108 N. E. 200.

For a discussion of mathematically determined probability and its use in evidence, see NOTES, p. 693.

EVIDENCE — OPINION EVIDENCE — HANDWRITING: TESTING LAY WITNESSES BY EXTRANEOUS TRUE AND FORGED SIGNATURES. — Witnesses who were acquainted with the defendant's handwriting from having seen him write or having seen his admitted signatures in the course of business, affirmed the authenticity of a disputed signature. On the cross-examination they were asked to pass upon the authenticity of other signatures, both true and forged. The merit of their answers was displayed by proving the authorship of these signatures in a manner which would have made authentic signatures admissible for the purpose of juxtaposition on the direct examination. *Held*, that such a test is not permissible. *Fourth National Bank of Fayetteville* v. *McArthur*, 84 S. E. 39 (N. C.).

The interesting problem of impeaching lay witnesses as to handwriting, which the case raises, is discussed in this issue of the REVIEW, p. 699.

EVIDENCE — OPINION EVIDENCE — SELF-DEFENSE: BYSTANDER'S OPINION OF DEFENDANT'S DANGER FROM DECEASED. — At a homicide trial the defendant pleaded self-defense and testified to her belief that the deceased was about to shoot. A witness, after describing the actions of the deceased, was then asked what he thought the deceased was doing with his right hand, and would have answered that "his impression" was that he "was attempting to draw a pistol." *Held*, that it was error to exclude this testimony. *Latham* v. *State*, 172 S. W. 797 (Tex. Cr. App.).

The lower court excluded the evidence on the ground that it was opinion

evidence. Where a witness is testifying to a person's actions or appearance the courts rightly show considerable freedom in allowing him to state his conclusion after relating all the facts, if it is otherwise difficult to convey the real situation to the jury. *Redford* v. *Birley*, 1 St. Tr. N. S. 1071, 1134; *Commonwealth* v. *Dowdican*, 114 Mass. 257; *State* v. *Buchler*, 103 Mo. 203, 15 S. W. 331. See 3 WIGMORE, EVIDENCE, §§ 1924, 1962, 1974. But if the witness's opinion, rather than the subject of it, is the evidential fact, it should be admissible entirely apart from the opinion rule. See GA. CODE, 1911, § 5874. Thus other people's statements are admissible when themselves evidential and not merely evidence of what they relate. See *Bacon* v. *Towne*, 4 Cush. (Mass.) 217, 240. In the principal case, the defendant had to show both that he thought the deceased would shoot and that he thought so reasonably. *People* v. *Kennedy*, 159 N. Y. 346, 54 N. E. 51. See 1 BISHOP, CRIMINAL LAW, 8 ed., § 305; 13 HARV. L. REV. 223. What a disinterested bystander thought the deceased would do is at least slightly probative of the reasonableness of defendant's opinion, and would apparently fall under no excluding rule. Yet such evidence is usually not admitted under a plea of self-defense. *State* v. *Rhoads*, 29 Oh. St. 171; *Smith* v. *Commonwealth*, 113 Ky. 19, 67 S. W. 32; *Lowman* v. *State*, 109 Ga. 501, 34 S. E. 1019. *Contra*, *Thomas* v. *State*, 40 Tex. 36; *Cochran* v. *State*, 28 Tex. App. 422, 13 S. W. 651; see *Hawkins* v. *State*, 25 Ga. 207, 210. Though it would seem more reasonable to consider the evidence admissible, it may have been unwise for the court here to overrule the trial judge in his determination of the value of remotely relevant evidence, which depends so largely on discretion. See THAYER, PRELIMINARY TREATISE ON EVIDENCE, p. 516.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — ENJOINING STATE PUBLIC SERVICE COMMISSION FROM ENFORCING STATUTE. — A statute of New Hampshire created a public service commission with power to promulgate and enforce rates and regulations, and provided that when the commission denied a rehearing there should be an appeal to the state supreme court. A railroad brought proceedings before the commission to test the constitutionality of a "mileage-book" statute which the commission was enforcing. It was held constitutional and a rehearing denied. Thereupon the railroad brings suit in the federal District Court to enjoin the enforcement of the statute by the commission. *Held*, that the proceedings will be held in abeyance until the railroad shall have exhausted its remedies before the state tribunals. *Boston & Maine R. Co.* v. *Niles*, 218 Fed. 944 (Dist. Ct., N. H.).

When the law deals with an administrative tribunal like this public service commission, with its combined legislative, executive, and judicial powers, its ordinary classifications necessarily break down. Proper results cannot be obtained without an analysis of the function being exercised in any given case. In determining their relations with state commissions of this sort, therefore, it is entirely proper that the federal courts should have made their interference depend upon the kind of action undertaken by the commission. The purely legislative matter of promulgating a rule or fixing a rate, it is clear that the federal courts will not enjoin. It has likewise been held that the federal courts will not interfere when the state legislative machinery is not yet exhausted because of the power of the state reviewing tribunal to substitute an order which it may deem proper. *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210. After the rule has been settled, however, and the legislative stage passed, there may be an injunction in a proper case even though the state law expressly provides for an appeal to the state courts to test the propriety of the action. *Bacon* v. *Rutland R. Co.*, 232 U. S. 134. To this extent at least the Supreme Court has recognized that a commission is not a "court" within § 256 of the Federal Judicial Code, which forbids an injunction against a state court except in bankruptcy cases. See *Prentis* v. *Atlantic Coast Line Co.*, *supra*; 36 STAT. AT